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**LATS Guidance on reporting,
notices and penalties
July 2009 v4**

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The Landfill Allowances and Trading Scheme (LATS)

This guidance applies to the LATS scheme year 2009/10

Waste Disposal and Unitary Authorities (WDAs) must provide quarterly returns to us within three months of the end of each quarter. Due dates are given on the next page. This gives WDAs sufficient time to collect data and submit returns to us.

We rely on the receipt of prompt and accurate data to provide each WDA with a quarterly mass balance and a quarterly predicted outturn. The mass balance shows how much BMW was landfilled in the quarter. A WDA can access its own quarterly mass balance on line through WasteDataFlow (WDF). A quarterly predicted outturn indicates the number of BMW allowances a WDA is likely to use in the scheme year. We use a forecasting tool to calculate predictions. Quarterly predictions are available on the LATS pages of our website.

Landfill operators receiving municipal waste are required to provide an annual return to us within three months of the end of the scheme year (i.e. by 30 June 2010).

Reporting – Local Authorities

In accordance with Defra and the Environment Agency guidance **all local authorities** report data using WDF, which is an online system. (www.wastedataflow.org)

The reporting deadlines for WDAs are set out in the LATS Regulations 2004:

WDAs must submit a return containing the information contained in Regulations 11(1) and (2). In order to satisfy this requirement WDAs must:

- achieve a level that we consider as **prompt** reporting (level 30 in WDF); **and**
- achieve a level that we consider as **accurate** reporting (level 35 in WDF)

Prompt Reporting

The data quality control process for LATS requires senior managers within each authority to authorise release of data. When released it is termed “level 30”. WDAs must authorise data to level 30 in WDF by each reporting deadline to meet their statutory reporting requirements under LATS. We consider this to be **prompt** reporting.

Accurate Reporting

The next step in quality control of the data is independent validation by Enviros Consulting Ltd. This is vital for maintaining consistency across all 359 authorities in England. During this process errors are resolved and when quality assurance is complete the data moves from level 30 within WDF to “level 35”. We consider this to be **accurate** reporting.

Table 1 (All Local Authorities need to read this table)

	Data period	Reporting deadline	Validation deadline	L35 roll-down request deadline
Quarter 1	1 April – 30 June 2009	30 Sept 2009	31 October 2009	13 November 2009
Quarter 2	1 July – 30 September 2009	31 December 2009	31 January 2010	12 February 2010
Quarter 3	1 October – 31 December 2009	31 March 2010	30 April 2010	14 May 2010
Quarter 4	1 January – 31 March 2010	30 June 2010	31 July 2010	2 August 2010*

* Please note that a roll-down of Q4 data is only available to authorities achieving early validation i.e. data has reached level 35 before 23 July 2010.

Level 35 roll-downs

Once data has been checked and authorised by an authority, submitted to WDF for quality assurance and validated to Level 35 we do not expect any further changes to be needed. We expect changes to the quality assured data to be by exception only. For this reason we have put in place specific requirements for Level 35 Roll downs.

The number of Level 35 roll downs that will be allowed is limited to two per scheme year per authority.

In addition, data for any quarter may only be changed once (e.g. a WDA could have a roll down for Q1 data and another roll back for Q2 data but not two roll downs in respect of Q2 data)

If an authority identifies an error in its validated data it must make a formal request for the data to be rolled down from Level 35. Requests must meet the strict deadlines set out in Table 1 above.

- Requests to change data for Q1, Q2 or Q3 after the deadlines are not likely to be considered unless there are exceptional circumstances which justify a late request and there is a significant impact on LATS
- Requests to change Q4 data after the deadlines will not be considered at all

The formal request for a Level 35 roll down must be submitted on the *England Level 35 Roll down Form* - this can be downloaded from the guidance section of WDF. The form should be completed and emailed to Enviro Consulting Ltd within the specified deadline. Enviro will then forward the form to the Environment Agency and Defra for consideration.

For a Level 35 roll down to proceed agreement is required from both Defra and the Environment Agency.

Reporting - Landfill Operators

Reporting deadlines for landfill operators are set out in the LATS Regulations 2004. Operators are required to provide an annual return of municipal waste landfilled in the LATS scheme year (i.e. 1 April 2009 – 31 March 2010) within 3 months of year end (i.e. by 30 June 2010).

Landfill operators must send data from 1 April 2009 – 31 March 2010 electronically to us by 30 June 2010. The data must be submitted in the format specified by us and be prompt and accurate.

Operators are required to complete an annual waste site return for each site where municipal waste has been disposed. Data needs to be broken down into quarters within the return. The return will include information about all municipal waste landfilled at the site and any pre-treatment which took place on site before landfilling.

Each different type of municipal waste must be described and coded using the European Waste Catalogue (EWC) which is also known as the List of Wastes.

Please go to our website for more information on how to send us data and the format we require: <http://www.environment-agency.gov.uk/business/sectors/99276.aspx>

This can also be accessed through:

Environment Agency home page>business & industry> sectors> waste management> what you must do> landfill> municipal waste

Serving Notices – Local Authorities

We need to ensure that diversion of waste away from landfill is legitimate and that collected municipal waste is accurately reported for LATS. We may serve notice on a WDA if it fails to provide sufficient information to enable us to confirm diversion or accurate reporting.

Examples of when we may serve a formal notice are:

- **To obtain details of the final UK destination of municipal waste** - so that we can audit the diversion of municipal waste away from landfill, we have to be satisfied that treatment or recovery is being carried out at suitably licensed or exempted facilities. If municipal waste is exported for reprocessing then it has to be done in accordance with the law.
- **To obtain evidence of the reject rate at any stage during reprocessing/ reuse** - to check that diversion is accurate, we require WDAs to report on the reject rates from various stages of reprocessing and reuse.

We will serve notice on any WDA where its data (or its constituents' data in two tier areas) has not been validated to Level 35 by the deadlines given in Table 1.

A formal notice may also be served on a WDA even after data has reached level 35 within WDF

Where we serve notice:

- The notice will be served to the Chief Executive of the WDA
- The notice will request the WDA to provide information within a specified time period (e.g. 10 working days).
- The WDA will be required to provide an evidence trail of where and how the information has been gathered.

Failure to comply with a notice may make an authority liable to a penalty from Defra

Penalties - Local Authorities

Within one month of the reporting deadlines (i.e. Level 30 submission to WDF), WDAs will automatically be reminded of their statutory requirements by the WDF system.

Following the quarterly reporting deadline, we notify Defra of all WDAs that fail to promptly report data. Defra may then send a provisional warning letter to non-compliant authorities. The letter explains that the authority has been provisionally penalised x GBP unless they:

- provide the required data within a specified timescale (e.g. 10 working days), or
- make a sufficiently robust representation to Defra within a specified timescale (e.g. 10 working days) as to why they have not provided the data.

Depending on the outcome of any representations by WDAs, Defra may issue a final formal penalty letter.

The penalty will depend on the number of reporting requirements that have been breached. A penalty of £1000 will be imposed for each requirement. There are five requirements and so up to £5000 per quarter could be payable in penalties by WDAs that fail to report promptly.

Details of Defra penalty guidance are available at <http://www.defra.gov.uk/environment/waste/localauth/lats/pdf/lats-penaltiesguidance0612.pdf>

Defra also has powers to suspend a WDA from banking, borrowing and transferring landfill allowances if a WDA has breached any requirement of the Regulations.

Serving Notices - Landfill Operators

So that we can complete our audit role, we require accurate and prompt data from landfill operators receiving municipal waste. If the data supplied by a landfill operator is incomplete or we require further information then we can serve a notice on the landfill operator to produce necessary records. The notice will require the landfill operator to provide the information within a specified time period (e.g. 15 working days). Failure to provide this information will result in us taking enforcement action. We also have powers of entry to find, inspect and copy records.

Enforcement Action – Landfill Operators

In June, we will automatically remind landfill operators of their statutory requirements by sending an email to them.

If a landfill operator fails to report promptly and accurately, we will send a warning letter. This will usually be sent in 7 working days after the reporting deadline and will tell the operator that they will be liable to enforcement action unless they:

- provide the required data within a specified time period (e.g. 10 working days), or
- make a sufficiently robust representation to the Agency within a specified time period (e.g. 7 working days) as to why they have not provided the data.

After the specified time period, depending on the outcome of any representations by landfill operators, we will begin enforcement action against any landfill operator that has not reported data in a prompt and accurate manner.

Reconciling allowances – Local Authorities

The LATS year ends on 30 September for trading, at which point all trading and borrowing of allowances for that year stops.

During September WDAs must decide whether or not they need to:

- buy or borrow¹ additional allowances, or
- sell surplus allowances, or
- bank² surplus allowances for use in the following year.

We will provide a draft reconciliation figure for each WDA by 31 August where prompt and accurate data are available. The draft reconciliation states that amount of BMW the WDA has landfilled in the scheme year. It also identifies the number of allowances the WDA holds and the difference between the available allowances and BMW landfilled. This can help WDAs decide whether to buy, borrow or sell allowances (within scheme restrictions).

Provision of this figure is not an opportunity to change reported data.

Any WDA that does not have a complete³ set of quarterly data at level 30 by 30 June and level 35 by 31 July may not receive a reconciliation figure.

It is in WDAs' interests to make robust arrangements for reporting complete data for the relevant scheme year to inform trading decisions and avoid incurring penalties.

¹ Allowances can only be borrowed in certain scheme years. Allowances cannot be borrowed into or out of target years. Target years are 2009/10, 2012/13 and 2019/20

² Allowances can only be banked in certain scheme years. Allowances cannot be banked into or out of target years. Target years are 2009/10, 2012/13 and 2019/20

³ Complete data means that it is both prompt and accurate. In two tier areas this refers to a complete set of quarterly data for all constituent WCAs in addition to quarterly data from the WDA

There is no provision within the Landfill Allowances and Trading Scheme (England) Regulations 2004 (LATS regulations) for a WDA to dispute or appeal the draft reconciliation figure. **The quantity of BMW landfilled and therefore the number of allowances that the WDA has used cannot be changed.** The reconciliation is “draft” because after receiving it there is still time for the WDA to trade allowances which could mean that the number of available allowances may change during September.

Summary of Key Points

- a) The annual reconciliation figure identifies the amount of BMW a WDA has landfilled and the number of allowances it has used.
- b) The annual reconciliation is a guide for WDAs to indicate whether or not they need to buy or borrow additional allowances to meet their annual allowance allocation.
- c) There is no provision within the LATS regulations for a WDA to dispute or appeal the reconciliation figure.
- d) There are strict deadlines and requirements for requests to change validated data which must be met.
- e) There is no opportunity to change reported data after the individual level 35 roll down deadlines. Provision of the annual reconciliation figure is not an opportunity to change data.
- f) We will provide quarterly predictions, available on our website, of the likely amount of BMW each WDA will landfill in the scheme year.
- g) Individual quarterly **mass balance calculations** will be available to WDAs online (in WDF) during the year, so that WDAs can get an indication of their performance whenever required.
- h) WDAs can be penalised for failing to report promptly and for non-compliance with a formal notice.
- i) Enforcement action taken against a landfill operator will be in accordance with our enforcement and prosecution policy.